

when he acquired them. The objection which was presented by petition and exception to the report of the Auditor, extended originally to four shares, parcel of the 35 shares transferred to Mendez I. Cohen, in 1841, but by the agreement before spoken of, has been narrowed down to the two shares numbered 44 and 76.

Mr. Cohen, by his answer, upon oath, takes the ground that he was a *bona fide* purchaser, for value of these shares, without notice of the arrangement between B. I. Cohen and the other trustees, and it appears by the evidence that he did purchase, and pay a valuable consideration for them, to the Banking House of J. I. Cohen & Brothers. He gave one hundred and forty dollars per share for them, and the Banking House being indebted to him in a larger amount at the time of the purchase they were paid for by debiting his account on the books with the amount.

The transfer book kept by the trustees of the theatre, which has been offered in evidence, shows that the shares in dispute were in fact transferred to Mendez I. Cohen by J. I. Cohen & Brothers, in June, 1841, and as the transfers made by the trustees of the shares of stock which they received of B. I. Cohen, under the arrangement spoken of by Mr. Meredith, were not made until 1842, and as the memorandum placed opposite to these transfers is the only evidence relied upon to bring home to Mendez I. Cohen notice of the nature of that arrangement, it seems very clear that he cannot be affected with notice.

Mr. Cohen does not deny that he had notice from the transfer books, that the trustees (other than B. I. Cohen) had stock in their names, but there is nothing to show that in June, 1841, when he received from J. I. Cohen & Brothers, for a valuable consideration paid them, a transfer of the shares in question, he knew of the arrangement between B. I. Cohen and the trustees. The entry in the transfer book relied upon to affect him with notice, was made at a subsequent period.

But it is said, that the transfer of these two shares by Cohen & Brothers to Mendez I. Cohen is void, because they belonged not to those parties but to B. I. Cohen individually.